

KI (USA) Corporation and United Automobile, Aerospace and Agricultural Implement Workers of America, UAW. Case 9-CA-30375

April 30, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On February 24, 1993, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 9-RC-15842. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On March 29, 1993, the General Counsel filed a Motion for Summary Judgment and Memorandum in Support of Motion for Summary Judgment. On March 31, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response and the Charging Party filed a statement in support of the General Counsel's Motion.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain but attacks the validity of the certification on the basis of its objections to conduct affecting the results of the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).¹

¹ The Respondent defends its refusal to bargain on the basis of an increase in the size of the unit. The Respondent has not presented any evidence in support thereof. In any event, this is not a matter properly raised as a defense to a refusal-to-bargain allegation where the Respondent is refusing to honor a Board certification. *Ray Brooks v. NLRB*, 348 U.S. 96, 103 (1954).

Accordingly, we grant the Motion for Summary Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, has been engaged in the manufacture and process of metal stampings and assembly of auto parts at its Berea, Kentucky facility. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its operations, sold and shipped from its Berea, Kentucky facility goods valued in excess of \$50,000 directly to points outside the Commonwealth of Kentucky. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held March 22, 1991, the Union was certified on December 16, 1992, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees employed by [Respondent] at its 501 Mayde Road, Berea, Kentucky location, including shipping and receiving and quality assurance employees, but excluding all office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since December 23, 1992,³ the Union has requested the Respondent to bargain and, since January 27, 1993, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after January 27, 1993, to bargain with the Union as the exclusive collective-bar-

² The Respondent's requests for oral argument and for full Board reconsideration of the underlying representation case decision are denied. The Charging Party filed an opposition to the request for oral argument.

³ The complaint alleges December 23, 1992, as the date of the Union's request to bargain although the Respondent asserts in its answer that the Union's letter was received on or about January 13 with a letter dated January 12, 1993. We find the Respondent's assertion raises no matter warranting a hearing.

gaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, KI (USA) Corporation, Berea, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time production and maintenance employees employed by [Respondent] at its 501 Mayde Road, Berea, Kentucky location, including shipping and receiving and quality assurance employees, but excluding all office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

(b) Post at its facility in Berea, Kentucky, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

⁴If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time production and maintenance employees employed at our 501 Mayde Road, Berea, Kentucky location, including shipping and receiving and quality assurance employees, but excluding all office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

KI (USA) CORPORATION